

ordinances repealing, amending, continuing or adding to the code, shall be published as required by law. . . ."⁷

Fourth Class Cities—1895 PA 215 c. IX, § 6; MCLA 89.6; MSA 5.1722, provides in pertinent part:

"Within 1 week after the passage of any ordinance the same shall be published in some newspaper printed and circulated within the city, . . ."

Villages—1895 PA 3 c. XI, § 4; MCLA 66.4; MSA 5.1274, provides in pertinent part:

"Within 1 week after the passage of any ordinance, the same shall be published in a newspaper printed in the village, if any is published therein, otherwise copies of the ordinance shall, within the same time, be posted in 3 of the most public places in the village; . . ."

Thus, as in the case of legal notices, municipalities must publish ordinances in a "qualified" newspaper published within their municipality. The term "qualified" refers to compliance with the statutory requirements. Fourth class cities and villages, however, have the added obligation of publishing their ordinances in a newspaper that is printed within such municipality.

FRANK J. KELLEY,
Attorney General.

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CONSTITUTION OF MICHIGAN: Art 5, § 5.

PROFESSIONS AND OCCUPATIONS: Const 1963, art 5, § 5.

WORDS AND PHRASES: "Professions"; "occupations."

Where the legislature creates a regulatory board with power to license and regulate an occupation, that occupation becomes a profession within the meaning of Const 1963, art 5, § 5.

Opinion No. 4899

October 23, 1975.

Honorable William Faust
State Senator
Capitol Building
Lansing, Michigan

You have requested my opinion on the following questions:

1. Does the word "profession" as used in Const 1963, art 5, § 5, include both "professional" and "occupational" licensing boards?

⁷ Ibid.

2. If not, what criteria is to be used to distinguish whether the activity which a certain board regulates is "professional" or "occupational"?

Const 1963, art 5, § 5, provides:

"A majority of the members of an appointed examining or licensing board of a *profession* shall be members of that *profession*." [Emphasis added]

The same general principles applied in construing statutes may be resorted to in the construction of the constitution, the object being to ascertain the intent of the people in view of the history of the times and the evil to be remedied. *Board of Education of the City of Detroit v Superintendent of Public Instruction*, 319 Mich 436; 29 NW2d 902 (1947) and *City of Jackson v Commissioner of Revenue*, 316 Mich 694; 26 NW2d 569 (1947). 6 Michigan Law & Practice, Constitutional Law, § 21, p 22. Effect must be given to the entire section of the constitution under consideration and words therein must be given their usual and ordinary meaning. 6 Michigan Law & Practice, Constitutional Law, § 21, pp 22, 23.

It has been said that it is difficult, if not impossible, to lay down a strict legal definition of the word "profession", *Teague v Graves*, 27 NYS2d 762, 766; 261 App Div 652 (1941), and that the term may be best understood by reference to characteristic elements rather than by definition. The word is vague, and neither static nor rigid and it is used in many different senses.

The word "profession" is most commonly employed in the sense of vocation, business, calling, or occupation, 72 CJS, Profession, pp 1215-1216, and usually connotes an attainment of special knowledge, as distinguished from mere skill. It also requires application of such education or special knowledge for others as distinguished from its pursuit for one's own purposes. The term further implies a practical dealing with affairs as distinguished from mere study or investigation.

Originally, and historically, the word "profession" was applied only to law, medicine, and theology and these were known as the three "learned professions." Thus, in *United States v Laws*, 163 US 258; 16 S Ct 998; 41 L Ed 151 (1896), the United States Supreme Court defined profession as:

"... an 'employment, especially an employment requiring a learned education, as those of divinity, law and physic.' (Worcester's Dictionary, title profession.) In the Century Dictionary the definition of the word 'profession' is given, among others, as 'A vocation in which a professed knowledge of some department of science or learning is used by its practical application to the affairs of others, their interests or welfare in the practice of an art founded on it. Formerly, theology, law, and medicine were specifically known as *the professions*; but as the applications of science and learning are extended to other departments of affairs, other vocations also receive the name. The word implies professed attainments in special knowledge as distinguished from mere skill. . . .'"

In modern usage, therefore, the tendency has been to enlarge and extend the scope and meaning of the term, and this has resulted in the word becoming more elastic and its denotation more liberalized, so that it has ceased to be applied exclusively to the learned professions. Thus, as science, learning and technology are extended to other areas of knowledge, additional vocations are so designated. 72 CJS, Profession, pp 1217-1219.

As indicated by the record of the *Constitutional Convention 1961*, Official Record, Vol II, pp 1893-1895, Const 1963, art 5, § 5 was enacted in part for the purpose of assuring that a majority of one "profession" could not control a licensing or examining board of another "profession"—thereby controlling the "profession" itself. Special note was made of the fact that the healing arts were separate and distinct sciences and could not satisfactorily be governed by a competitive school of healing. Another purpose of the constitutional provision, as recognized by the Court of Appeals, is that, if an examining or licensing board of a "profession" is to function successfully, board members must understand the technical and ethical standards of the regulated "profession." This may best be accomplished by requiring the members of examining or licensing boards to be members of the respective "profession." *Nemer v Michigan State Board of Registration for Architects, Professional Engineers and Land Surveyors*, 20 Mich App 429, 433; 174 NW2d 293 (1969).

The legislature has generally required examining and licensing boards to be composed of a majority of the members of the "profession" regulated as illustrated by the attached chart. It may be noted, however, that the various statutory provisions and case law on the subject are inconsistent. For example, 1931 PA 176, § 2; MCLA 338.752; MSA 18.132 defines cosmetology as an occupation. *Norling v James*, 38 Mich App 96; 195 NW2d 776 (1972), is in accord. However, 1941 PA 390, § 1; MCLA 338.651; MSA 18.118(1), speaks of "the profession of barbering and haircutting."

In 1963, pursuant to the Temporary Provisions of Const 1963, § 1, I pointed out to the legislature that there would be problems with Const 1963, art 5, § 5. I noted that certain statutory provisions of Chapter 338 of the Compiled Laws of 1948 failed to conform to Const 1963, art 5, § 5; for example, the Board of Examiners in the Basic Sciences and the Board of Registration for Architects, Professional Engineers and Land Surveyors, were not composed of a majority of the members of those "professions." Subsequently, in 1969, the Court of Appeals held the Board of Registration for Architects, Professional Engineers and Land Surveyors to be unconstitutionally composed. *Nemer v Michigan State Board of Registration for Architects, Professional Engineers and Land Surveyors*, 20 Mich App 429; 174 NW2d 293 (1969). The legislature then amended 1937 PA 240, § 3; MCLA 338.553; MSA 18.84(3), thereby creating separate state boards of registration for architects, professional engineers and land surveyors. Also, in 1972 the Board of Examiners in the Basic Sciences was repealed by 1972 PA 172, § 1.

In view of the foregoing, it is my opinion that where the legislature creates a regulatory board with power to license and regulate an occupation,

that occupation becomes a profession within the meaning of Const 1963, art 5, § 5.

FRANK J. KELLEY,
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Board	Board Members who are members of the "profession" regulated	Board Members who are not members of the "profession" regulated, but who are in a related "profession"	Public Representative	Total Board Members	Ex Officio Members
Accountancy	4	1	1	6	1
Architects	4	2	1	7	1
Barber	4	0	1	5	1
Chiropractic	6	0	1	7	1
Cosmetology	3	0	0	3	0
Dentistry	7	0	1	8	0
Electrical	5	3	1	9	0
Foresters	5	0	0	5	0
Hearing Aid Dealers	6	0	1	7	1
Horology	6	0	1	7	1
Land Surveyors	4	2	1	7	1
Marriage Counselors	5	3	1	9	1
Medical Practice	10	0	1	11	0
Mortuary Science	6	0	1	7	1
Optometry	5	0	0	5	0
Osteopathic	8	0	1	9	1
Pharmacy	6	0	1	7	1
Physical Therapy	5	3	1	9	1
Plumbing	4	0	1	5	1
Podiatry	4	0	1	5	0
Professional					
Community Planners	5	0	3	8	0
Professional Engineers	4	2	1	7	1
Social Workers	4 (+1)	0	2 (+1)	7	0
Veterinary	5	0	1	6	3